



THE COMMONWEALTH OF MASSACHUSETTS
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MICHAEL J. SULLIVAN

DIRECTOR

February 10, 1995
AO-95-06

Chad Forman
58 Bay Path Lane
Norwell, MA 02061

Re: Legislative Agents/Bundling

Dear Mr. Forman:

This letter is in response to your January 6, 1995 request for an advisory opinion regarding certain aspects of fundraising by legislative agents.¹ You ask five specific questions which I will answer separately after discussing the relevant provisions of the new "bundling" law.

Section 10A of M.G.L. c. 55, the campaign finance law, is a new provision which regulates certain "contributions made through an intermediary or conduit," or so-called "bundled contributions." The section was added by Chapter 43 of the Acts of 1994 and was recently amended. See Chapter 292 of the Acts of 1994, signed by the Governor on January 9, 1995. A copy of section 10A as amended is attached for your information. Section 10A was enacted into law to limit and regulate the bundling of large contributions by certain persons and organizations, such as legislative agents.²

¹ Chapter 43 of the Acts of 1994 added new definitions of, and restrictions on, both legislative and executive agents. See M.G.L. c. 55, ss. 1 and 10A as amended. However, section 17 of Chapter 292 of the Acts of 1994 delayed implementation of the restrictions on executive agents until July 1, 1995. Therefore, this opinion is limited to legislative agents until July 1, 1995, when it would also apply to executive agents absent further legislative action.

² See, Joint Committee on Election Laws release and section by section analysis (undated). See also May 13, 1994 Senate Ways and Means Committee Report summarizing Senate Bill 1704.

The new bundling provisions do not limit or regulate all "bundled contributions." In fact, bundling is only regulated when three specific criteria are met. First, one or more of the bundled contributions must be greater than \$100. Next, the contributions must be made to a candidate or a candidate's committee. Finally, the contributions must be made through a regulated intermediary.

By the express language of section 10A, regulated intermediaries include (1) political action committees and their officers, employees or agents, (2) legislative agents, executive agents (as of July 1, 1995), and lobbying organizations and their officers, employees or agents acting on behalf of the agent or organization, and (3) persons responsible for delivering "pooled" contributions from corporate employees or officers. See M.G.L. c. 55, s. 10A (b) (1) - (3).

Regulated intermediaries and bundled contributions to candidates are limited in two ways. First, the contributions are treated not only as contributions from the person making the contribution but also as "contributions from the intermediary or conduit to the candidate, if the intermediary or conduit is [a regulated intermediary] . . ." M.G.L. c. 55, s. 10A(b) (2). For example, if five contributions of \$100 each from five individuals and two contributions of \$200 each from two other individuals were made through a legislative agent, the legislative agent would be treated as having made a \$900 contribution. Since a legislative agent's individual contribution limit is only \$200, such an agent would be deemed to have made an "excess contribution." See M.G.L. c. 55, s. 7A(b).

Second, if contributions are made through a regulated intermediary, that regulated intermediary must "report in writing the original source and the intended recipient of such contribution along with other information required by [chapter 55] to the director [of OCPF] and to the [candidate]." See M.G.L. c. 55, s. 10A(e).

As defined by section 10A, the term "contributions made through an intermediary or conduit" includes both (i) contributions "**delivered**, whether in person or by mail, to a particular candidate or such candidate's authorized committee or agent" and also (ii) contributions made "in a manner that identifies in writing the person who **arranged** the making of the contributions" (Emphasis added). In both cases contributions must be made through the intermediary or conduit either by delivery or, alternatively, in a manner that identifies in writing the person who arranged the making of the contributions. See M.G.L. c. 55, section 10A(c) (1) (i) or (c) (1) (ii). Therefore, personal contributions from a regulated intermediary would not be included since they would be made by and not through the intermediary. Moreover, section 10A only applies when a regulated intermediary or conduit bundles two or more contributions.

I will now answer your specific questions which I paraphrase below.

(1) If a legislative agent's name appears on a fundraising invitation, are contributions sent to a candidate's committee in response to the invitation subject to the provisions of section 10A?

No. The mere fact that a legislative agent signs a fundraising letter or consents to the use of his name on such a letter does not trigger the "bundling" provisions of the campaign finance law.

Contributions made in response to the letter are not regulated by section 10A since they are not **delivered** to a candidate through a legislative agent as required by section 10A(c)(1)(i), or made in a manner that identifies in writing the person who **arranged** the making of the contributions as required by section 10A(c)(1)(ii). While a fundraising letter certainly is a writing, it is not a writing which identifies the legislative agent as a person who "arranged the making of the contributions." The writing merely identifies the person "soliciting" the contribution. If the legislature wished to prohibit mere solicitation by legislative agents and other intermediaries, they could have done so explicitly.

The word "arranged" is not statutorily defined. Therefore, we look to its ordinary meaning. Webster's New Collegiate Dictionary defines "arrange" to mean "to put into a proper order or into a correct or suitable sequence, relationship, or adjustment . . ." Solicitation, on the other hand, means "to approach with a request or plea." Therefore, an intermediary must do more than solicit contributions via a fundraising letter in order to have "arranged the making of the contributions." For example, if a legislative agent not only solicits a contribution but actually instructs the contributors to identify, with a note on their contribution checks, the legislative agent as the person responsible for arranging the contribution, the agent would be subject to the provisions of section 10A.

(2) What restrictions, if any, apply to a spouse of a legislative agent?

Section 10A regulates not only legislative agents but also any "officer, employee or agent of such legislative agent . . . acting in its behalf" which by statute is defined to include "using the name or resources of a [legislative agent]." See M.G.L. c. 55, s. 10A(c)(2). Therefore, if a spouse, who is not otherwise a regulated intermediary, is an employee or agent of the legislative agent and is also acting in the agent's behalf the spouse would be a regulated intermediary subject to the provisions of section 10A. I emphasize that both conditions must be met. For example, even if the spouse is such an employee or agent, if the spouse is not also acting in behalf of the agent, the spouse would not be subject to section 10A's limitations.

(3) May a legislative agent "bundle" contributions and deliver them to a candidate without being subject to section 10A if the agent's lobbying activities or business interests take place within the state legislative or executive branch and the candidate is running for an office at a different level of government, e.g. a county or municipal office?

No. Section 10A governs "[c]ontributions made to a candidate, such candidate's agent, such candidate's committee or such candidate's committee's agent, through an intermediary or conduit. . . ." The statute does not make any distinctions based upon the office a candidate is seeking nor the level of government a legislative agent lobbies.

(4) May a legislative agent promote a fundraising event orally, by phone or in person, without restrictions?

Yes. Consistent with the analysis set forth in my answer to question (1), the mere promotion of a fundraising event, by phone or in person, even when the person called decides to attend the event, does not trigger the provisions of section 10A. However, if the agent not only makes the calls but then picks up and delivers the contributions to the candidate the restrictions of section 10A would apply. In addition, if the legislative agent otherwise arranges the making of the contributions and identifies that arrangement in a writing provided to the candidate, such activity would subject the contributions and the agent to the requirements of section 10A.

(5) Do any of the provisions of Section 10A apply differently if a legislative agent is a family member, or a relative within the third degree of consanguinity³, of the candidate?

No. All contributions (if one or more is greater than \$100) made through a legislative agent to the candidate are subject to the provisions of section 10A even if the agent is related to the candidate.

In your letter, you note that portions of chapter 43 of the Acts of 1994 "recognize family relationships" and permit certain activities between legislative agents and public officials or public employees which, absent the family relationship, would be prohibited. You suggest that similar limitations should apply in section 10A.

You are correct that the portions of chapter 43 of the Acts of 1994 which addressed lobbying reform made specific provision to permit legislative agents to provide meals and/or

³ The phrase "third degree of consanguinity" appears in the M.G.L. c. 3, s. 43 as amended. Therefore, this office would defer to the Secretary of State's Lobbying Division for interpretation. For reference table see 23 Massachusetts Lawyers Quarterly No. 1, p. III (1938). See also M.G.L. c. 190, ss. 3 and 4 and M.P.S. vol. 20, Lombard, s. 265.

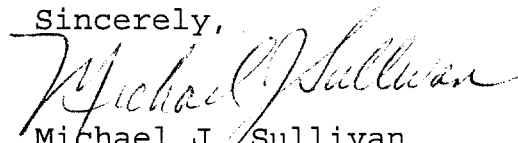
gifts to elected officials related to the agent by blood or marriage "within the third degree of consanguinity." See M.G.L. c. 3, s. 43 as amended by section 1 of chapter 43 of the Acts of 1994.

However, unlike the lobbying provisions of chapter 43, section 10A makes no distinction in the treatment of bundled contributions made through legislative agents to candidates based upon family relationship. In addition, the campaign finance law generally makes no such distinction. For example, all contribution limitations apply to individuals regardless of whether the individual is the spouse or other relative of a candidate. See M.G.L. c. 55, ss. 1, 7, 7A, and 10. Moreover, when the legislature has wished to make such a distinction in the campaign finance law, it has done so. See the residual funds clause set forth in section 18 of M.G.L. c. 55.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosure

Section 55:10A. Restrictions on contributions to candidates through certain intermediaries and conduits; definitions.

Section 10A. (a) Contributions made by a person to or on behalf of a particular candidate, including contributions made through an intermediary or conduit, shall be treated as contributions from such person to such candidate.

(b) Contributions made to a candidate, such candidate's agent, such candidate's committee or such candidate's committee's agent, through an intermediary or conduit shall also be treated as contributions from the intermediary or conduit to the candidate, if the intermediary or conduit is:

(1) a political action committee, or an officer, employee or other agent of such political committee;

(2) a legislative or executive agent registered pursuant to section forty-one of chapter three, or a lobbying group or organization registered pursuant to section forty-four of chapter three, or an officer, employee, or agent of such legislative or executive agent or lobbying group or organization acting in its behalf; or

(3) any person charged with the responsibility of delivering individual contributions from a group of officers or employees or a combination thereof of a corporation who have pooled such contributions;

(c) For purposes of this section, the following words shall, unless the context clearly indicates otherwise, have the following meanings:-

(1) "Contributions made through an intermediary or conduit", shall mean:

(i) contributions delivered, whether in person or by mail, to a particular candidate or such candidate's authorized committee or agent; and

(ii) contributions to a particular candidate, such candidate's authorized committee, such candidate's agent, or such candidate's committee's agent, in a manner that identifies in writing the person who arranged the making of the contributions.

(2) "Acting in its behalf", shall include using the name or resources of a person described in paragraph (b).

(d) Nothing in this section shall prohibit:

(1) a bona fide joint fund-raising effort conducted solely for the purpose of sponsorship of a fund-raising reception, dinner, or other event, in accordance with rules prescribed by the director by:

(i) two or more state or local committees of a political party acting on their own behalf; or

(ii) a special committee formed by one or more candidates and one or more state or local committees of a political party on their own behalf; or

(2) a fund-raising effort for the benefit of a candidate that is conducted by another candidate acting in his individual capacity.

(e) In all cases where contributions are made by a person either to or on behalf of a particular candidate through an intermediary or conduit as described in paragraph (b), the intermediary or conduit shall report in writing the original source and the intended recipient of such of such contribution along with other information required by this chapter to the director and to the intended recipient. A candidate or political committee that fails to receive such notice in writing, or equivalent actual notice of a violation of this section, shall not be civilly or criminally liable for any such violation, except to the extent of returning the excess of any contribution made in violation of this section.

(f) Nothing in this section shall be interpreted to permit a contribution which would otherwise violate the provisions of section ten.

(g) The limitations of this section regarding contributions made through an intermediary or conduit shall not apply when each contribution is one hundred dollars or less; provided, however, that said one hundred dollar amount shall be indexed biennially for inflation by the director, who, not later than December thirty-first of each odd numbered year, shall calculate and publish such indexed amount, using the federal consumer price index for the Boston statistical area.